

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MYRIAM ZAYAS,

Plaintiff,

v.

CITY OF ISSAQUAH,

Defendant.

CASE NO. 2:24-cv-625

ORDER TO SHOW CAUSE

1. INTRODUCTION

Pro se plaintiff Myriam Zayas was granted leave to proceed in forma pauperis on May 8, 2024. Dkt. No. 4. United States Magistrate Judge Brian Tsuchida recommended review of Zayas's complaint under 28 U.S.C. § 1915(e)(2)(B). *Id.* A summons has not yet been issued. *See* Dkt. The Court reviews this matter under 28 U.S.C. § 1915(e)(2)(b) and orders Plaintiff to show cause why her case should not be dismissed.

2. BACKGROUND

Zayas alleges that Officer John Doe illegally removed her two-year-old daughter from daycare on May 3, 2024, in violation of the Fourteenth Amendment

1 of the U.S. Constitution. Dkt. No. 5 at 3, 4. She claims that Officer Doe used his
2 badge to take her child when he should have known that this would cause trauma
3 to her and her child. *Id.* at 4. She also alleges there was no proof of child abuse or
4 neglect. *Id.*

5 Zayas also alleges there was no probable cause and no prehearing before
6 Officer Doe removed her child. *Id.* Additionally, she alleges that the removal order
7 was not valid because it was not signed by a lawyer. *Id.*

8 3. ANALYSIS

9 “Courts have a duty to construe pro se pleadings liberally, including pro se
10 motions as well as complaints.” *Bernhardt v. Los Angeles Cnty.*, 339 F.3d 920, 925
11 (9th Cir. 2003). But under 28 U.S.C. § 1915(e)(2)(B), the Court must dismiss any
12 portion of a civil complaint filed in forma pauperis that fails to state a claim upon
13 which relief can be granted, is frivolous, or seeks monetary relief from a defendant
14 who is immune from such relief.

15 First, Zayas has not adequately alleged a violation of the Fourteenth
16 Amendment that can be enforced under Section 1983. It violates the Fourteenth
17 Amendment to remove a child from a parent’s custody unless the removal is either
18 authorized by court order (i.e., a warrant) or is (1) supported by “reasonable cause to
19 believe that the child is in imminent danger of serious bodily injury” and (2) the
20 scope of the intrusion does not extend beyond what is “reasonably necessary to avert
21 that specific injury.” *Mabe v. San Bernardino Cnty., Dep’t of Pub. Soc. Servs.*, 237
22 F.3d 1101, 1106 (9th Cir. 2001) (citation omitted). Even if a court order authorized
23

1 the removal, an individual's Fourteenth Amendment right may be violated if the
2 court order was obtained through judicial deception. *David v. Kaulukukui*, 38 F.4th
3 792 (9th Cir. 2022). That is, if a plaintiff alleges "(1) a misrepresentation or
4 omission (2) made deliberately or with a reckless disregard for the truth, that was
5 (3) material to the judicial decision." *Id.* "A misrepresentation or omission is
6 material if a court would have declined to issue the order had [the informant] been
7 truthful." *Id.*

8 Zayas does not argue the absence of a court order. Instead, she argues that
9 the court order was not proper because it was only signed by a judge and a social
10 worker, not a lawyer. But she cites no authority for the clearly faulty proposition
11 that a court order is invalid if signed by a judge. She also does not allege that the
12 court order was based on misrepresentation.

13 Next, Zayas alleges only that Officer Doe carried out the removal court order,
14 but she does not otherwise allege wrong doing on Officer Doe's part. If Officer Doe
15 was acting pursuant to a valid court order, he would receive absolute quasi-judicial
16 immunity. *See Coverdell v. Dep't of Soc. & Health Servs., State of Wash.*, 834 F.2d
17 758, 764 (9th Cir. 1987). (Officers "who faithfully execute valid court orders are
18 absolutely immune from liability for damages in civil rights actions challenging
19 conduct authorized by the order."); *Moore v. Urquhart*, 899 F.3d 1094, 1104 (9th Cir.
20 2018) ("[I]f the judicial officer who issued the order is entitled to immunity, so too is
21 the executive officer who did nothing more than execute the order."). Zayas does not
22 allege any fact showing that Officer Doe was acting outside the scope of his
23 authority or that he did not strictly comply with the court order.

1 Finally, even reading Zayas’s complaint generously, her Section 1983 claim
2 against the City of Issaquah likely fails, because a “claim under *Monell* is the only
3 means of asserting a § 1983 claim against a municipality.” *Segura v. City of La*
4 *Mesa*, 647 F. Supp. 3d 926, 941 (S.D. Cal. 2022); *City of Canton, Ohio v. Harris*, 489
5 U.S. 378, 385 (1989) (“[A] municipality can be found liable under § 1983 only where
6 the municipality itself causes the constitutional violation at issue.”) (citing *Monell v.*
7 *New York City Dep’t of Soc. Servs.*, 436 U.S. 658 (1978)). Zayas names the City—a
8 municipality— but fails to allege a *Monell* claim. Thus, her Section 1983 claim
9 against the City of Issaquah is not viable.

10 4. ORDER TO SHOW CAUSE

11 Accordingly, Zayas’s complaint fails to state a claim under § 1983. To avoid
12 dismissal, Zayas must provide a written response within 21 days of entry of this
13 order, limited to 5 pages, as to why her complaint should not be dismissed.

14 Dated this 21st day of May, 2024.

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17 Jamal N. Whitehead
18 United States District Judge
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